



Small Group: Anti-Suit Injunctions in the Context of International Arbitration

Lucy Reed

Hypothetical Fact Patterns

(i) First Case: Anti-Suit Injunction In Support Of An Arbitration

Company A, a Delaware corporation signs with Company B, a Bermuda insurance company, an insurance policy governed by New York law including a London Court of International Arbitration (“LCIA”) arbitration clause fixing London as the seat of the arbitration.

Company A initiates litigation before the courts of Delaware against Company B seeking a declaration of liability and claiming compensation under the insurance policy. Company B argues that the contract contains an arbitration agreement and moves to stay the judicial proceedings in Delaware. In addition, Company B requests the courts in London to issue an order restraining Company A from pursuing its insurance claim against Company B in the courts of Delaware or any other forum except for arbitration in London.

Questions to be addressed:

What should the Delaware court do? What kind of considerations should the court address?

What would happen if the London court issues an anti-suit injunction? What should the US courts do? What would be the consequences?

Company A, a Russian corporation concludes with Company B, a French corporation, an agreement for the provision of certain services containing an

International Chamber of Commerce (“ICC”) arbitration clause establishing New York as the seat of the arbitration.

A dispute arises between both companies and Company B files an Arbitration Request for multiple breaches of the contract by Company A. Immediately thereafter, Company A files a suit before the courts of St Petersburg alleging breaches of the same contract by Company B. Company B requests the US courts to issue an injunction preventing Company A from pursuing any further proceedings in Russia. Company A on its turn files a request before the courts of St Petersburg in order to enjoin arbitration from proceeding any further.

Questions to be addressed:

What should the US court do? What kind of considerations should the court address?

What can we expect that the Russian court will do? What would be the consequences?

(ii) Second Case: Anti-Suit Injunction To Prevent An Arbitration

Company A, a Spanish corporation concludes with Company B, a US corporation, an agreement for the provision of certain services containing an ICC arbitration clause establishing Paris as the seat of the arbitration.

Due to liquidity problems, Company B files for protection under Chapter 11 of the Bankruptcy Act in the US courts. Several months later, Company A initiates arbitration proceedings against Company B in Paris for breach of a series of contractual provisions. Company B requests the Bankruptcy Court to issue an anti-suit injunction in order to stay the arbitration proceedings in Paris on account of the ongoing bankruptcy proceedings.

Questions to be addressed:

What should the Bankruptcy court do? What kind of considerations should the court address? Is there any public policy to be protected in this case?

What could Company A do? What should the ICC do?

(iii) Third Case: Anti-Suit Awards

Company A, a German corporation, and Company B, a Delaware corporation, are involved in LCIA arbitration proceedings in London for breaches of a contract for the provision of exclusive distribution services by Company B. Company B seeks annulment of the contract before the courts of Delaware based on the illegality of the contract under US antitrust laws. Upon request of Company A, the arbitral tribunal issues an award enjoining Company B from pursuing further proceedings in the US.

Questions to be addressed:

What should the US court do? What kind of considerations should the court address?

(iv) Fourth Case: Enforcement issues

Company A (a Delaware corporation) entered into a series of agreements with Company B, a South Korean state-owned engineering company for the purposes of constructing a dam in the Geumho River in the North Gyeongsang Province (the "Project"). Following a very serious financial crisis and a brief suspension and temporary restoration of the Project the South Korean government issued a decree suspending it indefinitely as part of an effort to stabilize the economy. As a result,

Company A declared force majeure and ceased performance under the agreements. The agreements contained almost identical arbitration clauses which required the parties to arbitrate in Zurich (Switzerland) pursuant to the United Nations Commission on International Trade Law Rules (the “UNCITRAL Rules”).

Company A brings arbitration proceedings in Switzerland against Company B for breach of the agreements. Company B participates in these proceedings. The arbitral tribunal renders an Award finding that Company B effectively breached the agreements and awarding damages.

Company B appeals the Award before the Supreme Court of Switzerland. While the appeal is pending, Company A initiates instant proceedings in the US federal district court to enforce the Award. Company B files a motion to stay the enforcement proceedings pending its appeal in Switzerland and challenges the enforcement based on several grounds.

Questions to be addressed:

What should the US court do? What kind of considerations should the court address?

What would happen if the Swiss court grants the appeal and the US court denies the motion to stay?